



DEPARTMENT OF THE NAVY
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IN REPLY REFER TO

SECNAVINST 5400.40

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SECNAV INSTRUCTION 5400.40

From: Secretary of the Navy
To: All Ships and Stations

Subj: MISSION, ORGANIZATION, FUNCTIONS, AND SUPPORT OF NAVY-MARINE
CORPS TRIAL JUDICIARY

Ref: (a) U.S. Navy Regulations, 1990
(b) Manual for Courts-Martial, United States
(c) Title 10, United States Code
(d) OPNAVINST 5400.24D
(e) SECNAVINST 5400.14A (NOTAL)

1. Purpose. To specify the mission, organization, and functions, and to provide for the administration and support to the Navy-Marine Corps Trial Judiciary under reference (a) and renumber the instruction in accordance with current Standard Subject Identification Codes.

2. Cancellation. SECNAVINST 5813.6C.

3. Background. The Navy-Marine Corps Trial Judiciary is responsible for providing military judges for special and general courts-martial within the naval service. The Navy and Marine Corps have established a unified trial judiciary to carry out that responsibility.

4. Mission. To provide certified military judges for all general and special courts-martial convened within the naval service (except those courts-martial for which the utilization of a certified military judge, not assigned to the Trial Judiciary, is authorized under directions of the Judge Advocate General) and to perform such other functions as may be assigned under the direction of the Judge Advocate General.

5. Organization. The Navy-Marine Corps Trial Judiciary is composed of the Office of the Chief Judge of the Navy-Marine Corps Trial Judiciary and such Judicial Circuits and their Branch Offices as may be established by the Judge Advocate General. The Judge Advocate General may also establish Judicial Areas, each consisting of two or more Judicial Circuits, for the purpose of providing an intermediate level of supervision within the Trial Judiciary. Manning for the Navy-Marine Corps Trial Judiciary will come from current manpower resources as determined by the Chief of Naval Operations, the Commandant of the Marine Corps, and the Judge Advocate General, acting in coordination.

6. Functions

a. To the greatest extent possible, the Navy-Marine Corps Trial Judiciary will provide military judges for all general and special courts-martial convened within the naval service.

b. Except as authorized under the direction of the Judge Advocate General, only military judges of the Navy-Marine Corps Trial Judiciary shall sit as military judges of general or special courts-martial convened within the naval service. When authorized by the Judge Advocate General, however, the following exceptions are permitted:

(1) The cognizant circuit military judge, or the Chief Judge, may authorize the detail of a certified military judge, not assigned to the Trial Judiciary, for the trial of special courts-martial as may reasonably be required under the attendant circumstances. Such circumstances may include, but are not limited to, periods of increased frequency of special courts-martial referrals and the appointment of special courts-martial to convene at remote locations in which trials by court-martial are relatively infrequent.

(2) The cognizant circuit military judge, or the Chief Judge, may designate for detail as military judge of a general or special court-martial convened within the naval service, a properly certified military judge of another branch of the United States Armed Forces, made available under R.C.M. 503(b)(3) of reference (b), when the exigencies of time and place of trial so dictate, provided, however, that only officers specifically designated by their armed forces as general court-martial military judges may be detailed to general courts-martial convened within the naval service.

7. Authority over Organization, Functions, and Administration. The Judge Advocate General is authorized to organize, administer, assign, and reassign functions to the Navy-Marine Corps Trial Judiciary and personnel attached thereto in accordance with reference (c).

8. Command and Support Relationships

a. The Navy-Marine Corps Trial Judiciary in Washington, D.C., is assigned to the Judge Advocate General for command and primary support. The military judges in each of the Judicial Circuits of the Navy-Marine Corps Trial Judiciary are assigned to the Judge Advocate General for command. Area coordination will be exercised in accordance with references (d) and (e). The Chief of Naval Operations or the Commandant of the Marine Corps, as appropriate, acting through district commandants, commanding generals, Marine Corps air station commanders, regional commanders, or regional coordinators in whose jurisdiction the military judges are located, will be

responsible for the provision of administrative support to the maximum extent possible

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within the availability of budgeted resources. In the event a military judge is not located at the headquarters of a district commandant, commanding general, Marine Corps air station commander, regional commander, or regional coordinator, the responsibility for providing administrative support will devolve upon the regional coordinator who exercises the authority to convene general courts-martial and whose area is served by the military judge. By mutual agreement, the Naval Legal Service Command or one of its offices may assume all or part of this support responsibility.

b. Administrative support will include provision of the following:

- (1) Office spaces;
- (2) Office equipment, furniture, stationery, and supplies;
- (3) Telephone and other communications services;
- (4) Access to law library;
- (5) Technical support to include technological upgrade; and

(6) Clerical assistance, under permanent assignment, with competence to perform clerical duties including, but not limited to: maintenance of court-martial dockets of the military judge(s); representation of the latter, in their absence, in the scheduling of cases; and provision of essential secretarial services for the military judge(s). (This support item is not required for offices of circuit military judges that have Navy Legalmen or Marine Corps legal service specialists assigned.)

c. Funds for the temporary additional-duty travel and per diem expenses incurred by military judges of the Navy-Marine Corps Trial Judiciary in carrying out its mission will be provided by the Judge Advocate General and Commandant of the Marine Corps. Allocation of the responsibility for such funding shall be made by mutual agreement of the Judge Advocate General and the Commandant of the Marine Corps.

9. Action. The Judge Advocate General shall:

a. Exercise command over the Navy-Marine Corps Trial Judiciary and ensure compliance with paragraphs 5, 6 and 7 of this instruction.

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b. Provide a continuing legal education program for military judges of the Navy-Marine Corps Trial Judiciary.

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Secretary of the Navy

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